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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

* * * * *
SHEILA J. PORTER, *
Plaintiff *
-vs- * Civil Action
ANDREA CABRAL; SUFFOLK COUNTY * No. 04-11935-DPW
SHERIFF'S DEPARTMENT; SUFFOLK *
COUNTY and CORRECTIONAL MEDICAL *
SERVICES, INC., *
Defendants *
* * * * *

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

DEPOSITION OF VIKTOR THEISS, ESQUIRE, a witness
called on behalf of the Plaintiff, in the
above-captioned matter, said deposition being
taken pursuant to the Federal Rules of
Civil Procedure, before Patricia M.
McLaughlin, a Certified Shorthand Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the offices of Goodwin Procter
LLP, Exchange Place, Boston, Massachusetts, on
Tuesday, May 24, 2005, commencing at 10:05 a.m.

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1 have got that person in there, so that we
2 don't blow them or stumble across them
3 ourselves.

4 Q For instance, the incident with Mr. Rosario
5 in November, 2002, when he wore a wire in the
6 Suffolk County House of Corrections, is it
7 your testimony that the Sheriff's Department
8 wasn't aware that he was doing this for the
9 FBI?

10 MS. CAULO: Objection.

11 A I have no knowledge about that incident
12 whatsoever.

13 Q So you don't know whether the Sheriff's
14 Department was aware of it or not?

15 A I don't.

16 MR. SCHUMACHER: Why don't we take a
17 five-minute break.

18 (Whereupon, a brief recess was held.)

19 BY MR. SCHUMACHER:

20 Q Mr. Theiss, at some point, did you become
21 aware that Mr. Rosario had made certain
22 allegations of abuse in May, 2003?

23 A Yes.

24 Q What was your understanding of what the

1 allegations were?

2 A At the outset, it wasn't clear. The
3 investigators were called by the unit officer
4 up in the infirmary, asked to respond to
5 speak to Inmate Rosario. They got a call
6 from the unit officer that an inmate wanted
7 to speak with them, and they responded up to
8 the unit. I can't remember if they were told
9 up there or the interview occurred down in
10 the SID office, but they were told that he
11 had been kicked by one of the officers in the
12 unit previous to going to the medical unit.

13 Q So the allegations first came to SID's
14 attention when someone from the medical unit
15 called SID; is that right?

16 A Mark DeAngelo or DeAngelis called SID and
17 said that an inmate wanted to speak with
18 them. So they responded right away and went
19 up and spoke with Rosario.

20 Q Who determines which investigators would go
21 speak to Rosario?

22 A For something, we run. It's better to
23 respond quicker, so rather than have to ask
24 approval to go, which run kind of an

1 A The investigators went to obviously speak to
2 the person that is making the allegations,
3 made their physical observations of him and
4 then proceeded to gather up the documentary
5 evidence that would exist, the medical
6 records, officer reports. They would begin
7 to conduct interviews into those that were
8 identified as potential witnesses.

9 Q How many incidents of allegations did
10 Mr. Rosario make?

11 A He ended up making two. There was one made
12 on the 19th and then one later made on -- I
13 can't recall whether it was either the 28th
14 or 29th of May.

15 Q Both of those incidents were investigated?

16 A Yes.

17 Q The case summary dealing with those
18 instances, they were sort of encapsulated
19 together?

20 A Correct. They were labeled Incident 1 and
21 Incident 2.

22 Q Were you satisfied with the investigation?

23 A Yes.

24 Q What was the result of the investigation?

1 A That there was insufficient evidence to
2 sustain the allegations made by Rene
3 Rosario.

4 Q What was that based on?

5 A It was based on several things. There were
6 inconsistent statements that he made as to
7 the causation of injury. He had told the
8 investigators initially that he had been
9 kicked while sitting upright. He later
10 stated that he was kicked while lying on his
11 bunk and his arms were down. He told Gail
12 Bartley that he was grabbed by an officer,
13 not kicked by an officer.

14 The injuries observed weren't consistent
15 with being kicked, so they weren't -- the
16 photographs that did not show, nor did the
17 physical examination show, the serious level
18 of injury consistent with what was being
19 reported.

20 Rene Rosario himself would be a very
21 difficult witness. He has very inherent
22 credibility issues based on his utilization
23 of the psychiatric process to generate moves
24 from units that he didn't find favorable, so

1 discuss ongoing investigations?

2 A Right. Ongoing investigations, requests for
3 equipment resources, update her on
4 developments on what I was trying to
5 accomplish within the division, et cetera.

6 Q Do you also have regular meetings with the
7 Sheriff on similar topics?

8 A Regular, no.

9 Q Occasional meetings with the Sheriff?

10 A Yes, kind of catch-is catch-can. Her
11 schedule back then was even busier than it is
12 today. That's why it was important to have
13 the Chief of Staff added into the chain of
14 command, because the Chief of Staff was there
15 on a regular basis and could get all the
16 information.

17 Q In what context did you report to the Sheriff
18 the Rosario investigation?

19 A I don't recall how it came about.

20 Q Do you remember how many times you spoke to
21 her about the Rosario investigation?

22 A Once.

23 Q A phone call, a meeting?

24 A It would have been in person.

1 Q Do you remember -- did you go to her office?

2 A I don't remember exactly, but I'm sure that
3 would have been where -- I didn't have much
4 interaction with her anywhere else.

5 Q Was the purpose of that meeting to discuss
6 the Rosario investigation?

7 A I don't believe so. I believe it was just to
8 update her on everything. Obviously, she was
9 interested in how SID was developing and the
10 changes that we were trying to implement, the
11 new staff, the training, but at the same
12 token when I had the opportunity to give her
13 updates on cases that came up, I would have
14 done so.

15 Q When did this take place?

16 A I don't recall exactly.

17 Q If I tell you that the case summary is dated
18 June 4th, 2003, presumably, it would be
19 sometime after June 4th?

20 A Again, I just don't know.

21 Q What do you recall telling Sheriff Cabral
22 about the Rosario investigation?

23 A Just the same synopsis I gave to the Chief of
24 Staff; here is what we found out; that there

1 Q What is your understanding what took place
2 with respect to that topic?

3 A Just if she contacted the FBI. I believe she
4 knew Krista Snyder, talked to Krista Snyder.

5 Q Why would SID want to know whether or not
6 Mrs. Porter had contacted Miss Snyder?

7 A My opinion it was curiosity on the part of
8 Investigator Dacey and Aleman. They knew
9 that the FBI had been contacted, and it
10 wasn't self-evident from whom.

11 She had mentioned in a previous
12 interview, she meaning Porter, that Rene had
13 had some contact with the Federal Government.
14 She brought up the wire on her own on the
15 22nd, so I think it was curiosity.

16 It wasn't a major part of their
17 investigation. They weren't ordered to do
18 it. I just think it's curiosity to close out
19 a loop, as you're doing today, and clearly,
20 it was an interesting issue, particularly
21 since what the FBI was coming back to us with
22 didn't match up with what was in the file.

23 Q Do you recall the SID investigators then
24 report to you with regard to their

1 Q You don't know if that was something they
2 were curious about?

3 MS. CAULO: Objection.

4 A I don't recall. The big factors to me, like
5 I've said all day long, were the inconsistent
6 observations of injury. I've said it all day
7 long.

8 Q You mentioned earlier that during one of
9 Investigator Wotjonski's second conversation
10 with Krista Snyder they were discussing the
11 Rosario allegations, and I think you
12 testified that Krista Snyder agreed that his
13 allegations weren't sustainable. Do you
14 recall that?

15 MS. CAULO: Objection.

16 A I believe I testified that that was Stan in
17 my conversation. I spoke with Krista Snyder.

18 Q Tell me everything you recall about what
19 Krista Snyder told you with regard to SID's
20 conclusions.

21 MS. CAULO: Objection. Asked and
22 answered quite some time ago.

23 A When I contacted Krista Snyder trying to get
24 Rene Rosario moved out of our facility to

1 another facility, I reviewed with her
2 basically what we had found, ran through the
3 facts as we had them, the issues discussed in
4 the conclusion and told her that I didn't see
5 a sustainable case here. She agreed with me.

6 Q What did she say?

7 A She said I agree; it sounds like you guys did
8 a thorough job and I agree and we'll do what
9 we can to get him sent to Concord. In my
10 mind, the fact that they have never done an
11 independent investigation of theirs, which
12 they clearly have the power to do, they never
13 came into talk to officers, they never have
14 charged any officer with any contact to Rene
15 Rosario, to my mind, the absence of any
16 investigation or action on their part on Rene
17 indicates that they were satisfied with what
18 we did.

19 Q Did you discuss with Miss Snyder at this time
20 Mrs. Porter's communications to her.

21 A No.

22 Q Why not?

23 A Because it was not a big deal to me. The
24 fact that she communicated with the FBI, it